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11 ELMBURG, ERIC ELMBURG, ROCKY
FLICK, CRESTWOOD HOLDINGS, INC. and
12 BERGAN, LLC

13

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16

17 MICHAEL MONTGOMERY,

18 Plaintiff,

19 v.

20 WAL-MART STORES, INC.;
21 KINDERHOOK INDUSTRIES II, L.P.;
KINDERHOOK INDUSTRIES, L.L.C.;
KINDERHOOK CAPITAL FUND II, L.P.;
CRESTWOOD HOLDINGS, INC.;
BERGAN, L.L.C.; JOHN ELMBURG;
ROBERT ELMBURG; ERIC ELMBURG;
ROCKY FLICK; HOME DEPOT U.S.A.,
INC.; DOES 1 through 20 inclusive,

25 Defendants.

26 Case No.: 12CV3057 JLS (DHB)

27 **DECLARATION OF JOHN
ELMBURG IN SUPPORT
MOTION TO DISMISS FOR
LACK OF STANDING (12(B)(1)),
LACK OF PERSONAL
JURISDICTION (12(B)(2)), AND
FAILURE TO STATE A CLAIM
(12(B)(6))**

28 Date: April 11, 2013
Time: 1:30 p.m.
Ctrm: 3B
Judge: Hon. Janis L. Sammartino

1 I, John Elmburg, declare as follows:

2 1. The statements made in this declaration are based upon my personal
3 knowledge, except where states upon information and belief, and if called to testify
4 with regard to the same, I could do so competently.

5 2. At all relevant time to this matter, I have been a resident of Oklahoma.

6 3. In 2002, the year of the Montgomery incident, Blitz U.S.A., Inc. ("Blitz")
7 manufactured pet products and automotive products, including gasoline containers.
8 Blitz was an Oklahoma corporation and its manufacturing facility was located in
9 Miami, Oklahoma.

10 4. In 2002, Blitz was a family business owned by the Elmburg family. My
11 wife and I (or our respective living trusts) owned a majority interest in Blitz and our
12 sons, Robert and Eric owned a minority interest.

13 5. On October 2, 2005, the Elmburg family each transferred our Blitz stock
14 in exchange for a like number of shares in Crestwood Holdings. Following this
15 transfer, my wife and I owned a majority interest in Crestwood Holdings and Eric and
16 Robert owned a minority interest. Following this transfer, the Elmburg family owned
17 all issued and outstanding stock of Crestwood Holdings, and Crestwood Holdings was
18 the parent company and owned all issued and outstanding stock of Blitz.

19 6. On September 21, 2007, Crestwood Holdings sold 100% of the Blitz
20 stock to Blitz Acquisitions, LLC, ("Blitz Acquisitions") a Delaware limited liability
21 company, and an entity unrelated to Crestwood Holdings. From and after September
22 21, 2007, I held neither a direct nor indirect ownership interest in Blitz.

23 7. I have never manufactured or sold gasoline containers.

24 8. I have never manufactured products and have never injected any product
25 into the stream of commerce with an expectation that such product will be sold in
26 California.

27 9. I have been to California on a limited number of business and personal
28 trips.

10. On November 6, 2011, Blitz and Blitz Acquisitions filed for bankruptcy protection under Chapter 11 in the matter styled: *In re: Blitz U.S.A., Inc. et al.*, United States Bankruptcy Court for the District of Delaware, Case No. 11-13603-PJW. Such bankruptcy action is currently pending.

I declare under penalty of perjury that the foregoing is true and correct, except for those matters stated on information and belief and as to those, I believe them to be true.

Executed on this 5th day of March, 2013 at Monkey Island, Oklahoma.

John Elmburg